

The complaint

Mr R, through a representative, says NewDay Ltd, trading as Aqua, irresponsibly lent to him.

What happened

Mr R took out a credit card from NewDay in November 2017. He was given a £900 credit limit. This was increased seven times and by July 2021 it was £7,850. He says NewDay didn't ask him any questions to confirm that he would be able to repay the credit in a sustainable way. He already had multiple other borrowings and he had to take out additional lending to pay for the credit.

NewDay says it carried out proportionate checks at each stage that showed Mr R could afford the credit.

Our investigator upheld Mr R's complaint. He said whilst NewDay's checks were proportionate when Mr R opened the account it did not make a fair lending decision.

NewDay disagreed with this assessment. It said the investigator upheld the complaint based on Mr R having limited disposable income, but he did not provide any evidence such as bank statements that would support this. It said it no longer holds the detailed information used at account opening but submitted its most recent affordability paper.

Our investigator explained his conclusion was based on the data NewDay shared with this service about Mr R's income and existing credit commitments when he applied. NewDay did not respond so the complaint was passed to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Our approach to unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - is set out on our website and I have followed it here.

NewDay is required to lend responsibly. It needed to conduct checks to make sure that the credit it offered to Mr R was affordable and sustainable. Such checks need to be proportionate to things like the credit limits it offered Mr R, how much he had to repay (including interest and charges) each month, his borrowing history with it and what it knew about his circumstances. But there is no set list of checks it had to do.

This means to reach my decision I need to consider if NewDay carried out proportionate checks; if so, did it make fair lending decisions based on the results of its checks; and if not, what better checks would most likely have shown. I also need to think about, bearing in mind the circumstances at the time of each additional advance in credit, whether there was a point at which NewDay ought reasonably to have realised it was increasing Mr R's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit.

I can see as part of NewDay's checks when Mr R applied it considered his income and total level of borrowing held elsewhere. Given the stage in the lending relationship I think these checks were proportionate but I don't find NewDay made a fair lending decision based on the information it gathered. I'll explain why.

NewDay confirmed in its final response letter to Mr R that it knew his income was £17,750, that he already had debt of £22,600 and that there was no adverse data on his credit file. At this stage I find it ought to have declined Mr R's application. He would have needed to spend around £1,130 to repay his existing debt (assuming a repayment rate of 5% of balance) which was around 85% of his income. And after taking into account the repayment of this new card at £45 a month it would leave him with just £155 a month to cover all his housing and living costs. This is not reasonable. In addition, I think NewDay ought to have been concerned about the proportion of income Mr R was already spending on credit – as it knows, this is often an indicator of pending financial difficulties.

It follows I think NewDay was wrong to open this account for Mr R. Logically, all subsequent increases to the credit limit should not have been given as Mr R ought not to have had the credit facility.

I've also considered whether the relationship might have been unfair under Section 140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed below results in fair compensation for Mr R in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

Finally, Mr R asked for compensation for the distress and inconvenience he suffered because of the way NewDay handled his complaint. But this is not something I can look at. There is a difference between a complaint about a financial service and a complaint about how a firm has handled a complaint. I can only look at the former. Mr R's dissatisfaction about how NewDay responded to his complaint is not a complaint about its provision of or failure to provide a financial service – it's distinctly about complaint handling. And under our rules I cannot consider complaint handling.

Putting things right

As I don't think NewDay ought to have opened the account, I don't think it's fair for it to be able to charge any interest or charges under the credit agreement. But I think Mr R should pay back the amount he borrowed. Therefore, NewDay should:

- Rework the account removing all interest, fees, charges and insurances (not already refunded) that have been applied.
- If the rework results in a credit balance, this should be refunded to Mr R along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. NewDay should also remove all adverse information regarding this account from Mr R's credit file.
- Or, if after the rework there is still an outstanding balance, NewDay should arrange an affordable repayment plan with Mr R for the remaining amount. Once Mr R has cleared the balance, any adverse information in relation to the account should be removed from his credit file.

If NewDay has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

*HM Revenue & Customs requires NewDay to deduct tax from any award of interest. It must give

Mr R a certificate showing how much tax has been taken off if he asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I am upholding Mr R's complaint. NewDay Ltd must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 18 October 2024.

Rebecca Connelley
Ombudsman